

**Manchester City Council
Report for Resolution**

Report to Planning and Highways Committee – 14 December 2017

Subject: Objection to tree preservation order jk 21/06/17 TPO 19 Palatine Crescent Didsbury, Manchester M20 3LL

Report of: Head of Planning, Building Control and Licensing

Purpose of report

To inform the committee about the background and issues involved in the making of a Tree Preservation Order (TPO) on 21st June 2017 and to recommend the confirmation of this Tree Preservation Order.

Recommendation

The Head of Planning recommends that the Planning and Highways Committee instruct the City Solicitor to confirm the Tree Preservation at 19 Palatine Crescent, Didsbury, Manchester M20 3LL, under Section 199 of the Town and Country Planning Act 1990, and that the Order should cover the tree as plotted T1 on the plan attached to this report.

Wards Affected Didsbury West

Financial Consequences for the Revenue Budget /Capital Budget
None

Implications for:

Anti-poverty	Equal Opportunities	Environment	Employment
No	No	Yes	No

Contact Officer:

John Kelsey
Senior Planner, Urban Design and Conservation,
Growth and Neighbourhoods Directorate,
Tel: 0161 234 4597
Email j.kelsey@manchester.gov.uk

Background Documents

None

1.0 Introduction

The committee is asked to consider 1 objection made to this order. This relates to a Tree Preservation Order served at the above address on an oak tree within the rear garden of 19 Palatine Crescent, Didsbury, Manchester, M20 3LL.

2.0 Background

On the 21st June 2017 a concerned local resident reported that works had just commenced to fell a mature oak tree within the rear garden of the 19 Palatine Road Crescent, Manchester and asked for a TPO to be made on the tree. The City Arborist visited the site later the same morning and following his advice an emergency TPO was made on the tree. While on site the City Arborist requested that the contractors ceased works as an emergency TPO was being made on the tree and this request was complied with and works stopped.



Oak tree form, canopy and relationship to adjacent residential properties

The City Arborist considered the tree to be a mature English oak worthy of a TPO due to its size and location, and is one of very few mature oaks within the area. It is approximately 14m in height and with an average crown diameter of 7m. A Helliwell method of Visual Amenity Valuation of trees 2008 has been carried out and this assessment found the tree to be of high visual amenity value.

The property is situated on the north side of Palatine Crescent and is adjacent to but outside of the Ballbrook Conservation area. There is an existing TPO in place

(Palatine Crescent, West Didsbury 2008) that protects many of the trees within the front gardens of Palatine Crescent.



Oak tree viewed over roof ridge as viewed from public highway

Following the making of a provisional TPO a letter of objection has been received from the owner stating reasons why the tree should be felled.

Email correspondence has been sent to the owner to provide a further explanation of why a provisional TPO has been made on a tree at this property. An offer has been made to consider further pruning works to help further alleviate some of the problems this tree is causing the owners. The owner remains concerned that his young family health and safety is affected by the tree and would like to maintain his objection to this TPO.

This report requests that the Committee instruct the City Solicitor to confirm the TPO at 19 Palatine Crescent Didsbury, Manchester M20 3LL.

3.0 Consultations

Part 2, paragraph 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 states that before a provisional TPO is confirmed, any persons interested in land affected by the order should be served with a copy of the order. Local residents in the vicinity were consulted and objections and representations made with respect to the Order have been considered.

The following residents were served with a copy of the order or notified about the TPO, on the 21st June 2017

The Owner(s) and/or any Occupier(s) of 19 Palatine Crescent Didsbury, Manchester M20 3LL

17 Palatine Crescent Didsbury, Manchester M20 3LL
9, The Circuit, Manchester, M20 3RA
11, The Circuit, Manchester, M20 3RA
13, The Circuit, Manchester, M20 3RA
12 Wolseley, Manchester, M20 3LR

4.0 Summary of objections

An objection has been received from the owner of 19 Palatine Crescent Didsbury, Manchester M20 3LL

In summary it states:

- Before works commenced on the tree the owner contacted the City Council and received confirmation that the tree was not protected. They had spoken to both of their adjoining neighbours and they had no objections and supported the reasons for the proposed removal of the oak tree in the rear garden.
- The squirrels and pigeons that use the tree excrete large amount of faeces onto their garden and at 11, The Circuit, particularly on young children's play equipment. It is not safe for the children to play outside unless the play equipment is washed every time. On one occasion there was an incident where one of the children got an eye infection. The tree is a health risk for the owner's children and their neighbours.
- The tree is too large for a small garden, a position supported by some neighbours, and the tree is very close to the house and could cause structural problems in the future.
- The works carried out to the tree have changed the shape of the tree and it is now not visually attractive.
- Since moving into the property in 2013 the garden has been re landscaped and 3 silver birch trees have been planted. If the TPO is not confirmed, allowing the owners to remove the mature oak tree, they are prepared to plant another smaller tree.

5.0 Summary of support

6 letters and an email from the West Didsbury Residents Association have been received in support of the making and confirming of a TPO on this oak tree. In summary they state that:

- The tree is a beautiful, vigorous healthy specimen which probably predates or is complementary with the house. It forms a key part of the local landscape - there are 2 other similarly aged oak trees nearby and together they are part of the historic and present character of Didsbury and Withington

- The tree is highly visible and valued by a large number of nearby households. It forms part of the local urban forest, visible over numerous rooftops.
- The tree provides screening benefits for a number of households and its removal would have a significant negative impact on the surrounding area and the enjoyment of local people
- This oak tree is important to creating a 'sense of place', its removal would detract greatly from the local landscape and character of the area.
- The oak tree's significant stature and presence cannot be replaced during this lifetime
- The tree will continue to provide amenity well into the future due to the longevity of oaks and the vigorous health of this specimen
- The tree provides huge benefits in terms of supporting local bio diversity, helping to improve air quality in this part of Manchester which suffers from high levels of pollution from vehicular traffic in particular from Wilmslow Rd
- If every householder who experienced bird dropping falling from a tree asked for their trees to be felled there would have very few trees, little biodiversity in Manchester and extremely poor air quality, in residential areas
- The occupant of the property has recently bought the property with the full knowledge there was a large tree in the rear garden
- The tree makes a significant contribution to the visual amenity enjoyed from neighbouring property
- The impact of works on local trees from current works at Christie Hospital and in the future from HS2 places even greater importance on protecting those remaining mature trees in the locality
- The making of this TPO will be an opportunity to use the law to halt further damage, as several large trees have been lost in the area over recent years, and preserve an important asset in its natural surroundings
- Local resident upset when works commenced and fully support the decision to protect this mature, healthy and attractive tree
- Neighbour has a tree that needs regular maintenance but would not consider felling to remove the nuisance as feels we have a duty of care to future generations to enjoy the beauty of trees from our homes

6.0 Arboricultural officer comments

The City Arborist carried out a site survey and considers this mature English oak tree appeared to be in good health, visible from the street and surrounding properties and worthy of a TPO due to its size and location and being one of very few mature oak trees within the area.

He advises that the previous pruning has not detracted significantly from the visual amenity that this tree offers as only some of the lower branches had been removed and the natural shape of the tree has been maintained.

He considers that the tree is located within a relatively large garden which can easily accommodate a tree of this size and that it can be managed so it causes less inconvenience to the owner whilst maintaining a presence in the area. He stated that several neighbours had approached him while he was on site to express their enjoyment of the tree.

6.0 Issues

Concerns about damage from bird/animal droppings - while it is accepted that this is a real concern for the home owner, the problem around any potential health and safety risks can be alleviated by regular washing of the affected area and should not be given any significant weight in the decision to confirm this TPO. It is considered that the visual public benefits of retaining this tree outweigh any harm caused.

Tree is too large for the garden - the City Arborist considers that the tree is located within a relatively large garden which can accommodate a tree of this size and that it can be managed so it causes less inconvenience to the owner whilst maintaining a presence in the area.

The rear garden of the property is approximately 19m in length and this Oak tree is situated adjacent to the side common boundary with 11 The Circuit, Didsbury. The Oak tree is situated approximately 7m from the rear elevation of the property and it is not considered to be an overly onerous burden on the landowner or visually disproportionate to the size of the garden. A significant proportion of the garden remains for the future use by the occupiers and careful management of the tree will keep it in proportion to the size of the garden.

Potential damage to foundations of the property - no evidence has been provided to support this claim and oak trees root system are not considered to be particularly invasive. In Manchester damage to foundations from tree roots is a very rare occurrence.

Works owner carried out to the tree have had a detrimental impact on the trees visual amenity – the City Arborist states that this previous pruning work to have not detracted significantly from the visual amenity of the tree as only some of the lower branches had been removed and the natural shape of the tree has been maintained.

The canopy of this tree, situated in the rear garden of the property, can be seen from both short and long range views, from both occupiers of surrounding properties as well as public areas, principally from both the public highway of The Circuit and Palatine Crescent. The Helliwell Assessment of the tree found the tree, following these recent pruning works, to continue to be of high visual amenity value.

Proposed tree replanting if City Council do not confirm the TPO on this tree and allow its removal – this tree is a mature oak tree and it is not considered possible within this lifetime to be able to replace its visible amenity value, bio diverse wildlife benefits and its contribution to the enjoyment of the occupiers of neighbouring properties.

Other issues – native oak trees support more species than most other British trees, providing a biodiverse rich environment and habitat. Its loss would be considered to have a detrimental impact on local biodiversity. This mature tree provides valuable screening benefits across the rear gardens of neighbouring properties and supports improvements in local air quality. Its position within the rear garden, together with

mature trees in neighbouring gardens provides a highly valued part of the local urban landscape character.

7.0 Conclusion

It is considered that the oak as shown on the attached plan, should be protected by a Tree Preservation Order. The City Arborist considers the tree to be in good condition, healthy with no major defects. It is of high amenity value, located in a prominent position within the rear garden, highly visible to and enjoyed by a significant number of occupiers of neighbouring residential properties and from vehicular traffic and pedestrians on Palatine Crescent. The tree in question is an important element of the local landscape and its biodiversity and provides important screening across the rear gardens of neighbouring properties.

The Order has been properly made in the interests of securing the contribution this tree makes to the public amenity value in the area. The concerns of the homeowner have been fully considered and balanced against the contribution this oak tree makes to the local environment. Whilst it is acknowledged that the reason for objecting to the TPO, in particular concerns about bird and animal droppings and its size requires due consideration, it is not felt that they outweigh the significant contribution this tree of high amenity value makes to the area.

Human Rights Act 1998 considerations

This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments. Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Unitary Development Plan, the Head of Planning has concluded that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the Tree Preservation Order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

8.0 Recommendation.

The Head of Planning, recommends that the Planning and Highways Committee instruct the City Solicitor to confirm the Tree Preservation Order at 19 Palatine Crescent, Didsbury, Manchester M20 3LL, under Section 199 of the Town and Country Planning Act 1990, and that the Order should cover the trees as plotted on the plan attached to this report.

